

1 A bill to be entitled
 2 An act relating to the Florida Insurance Guaranty
 3 Association; reordering and amending s. 631.57, F.S.;
 4 revising the duties of the association; authorizing
 5 the association to collect regular assessments
 6 directly from policyholders; authorizing the
 7 association to collect emergency assessments from
 8 insurers under certain circumstances; making technical
 9 and grammatical corrections; providing an effective
 10 date ; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13 Section 1. Subsection (2) of section 631.57, Florida
 14 Statutes, is amended, and subsection (3) of that section is
 15 reordered and amended, to read:

16 631.57 Powers and duties of the association.—

17 (2) The association may:

18 (a) Employ or retain such persons as are necessary to
 19 handle claims and perform other duties of the association;

20 (b) Borrow funds necessary to effect the purposes of this
 21 part in accord with the plan of operation, including borrowing
 22 necessary to ensure that its cash flow needs are timely met to
 23 pay covered claims when regular and emergency assessments are
 24 levied on policyholders under subsection (3);

25 (c) Sue or be sued, provided that service of process is
 26 ~~shall be~~ made upon the person registered with the department as
 27 agent for the receipt of service of process; and

28 (d) Negotiate and become a party to such contracts as are

29 necessary to carry out the purpose of this part. ~~Additionally,~~
 30 The association may also enter into such contracts with a
 31 municipality, a county, or a legal entity created pursuant to s.
 32 163.01(7)(g) ~~as are necessary~~ in order for the municipality,
 33 county, or legal entity to issue bonds under s. 631.695. In
 34 connection with the issuance of ~~any~~ such bonds and the entering
 35 into of ~~any~~ such ~~necessary~~ contracts, the association may agree
 36 to such terms and conditions as the association deems necessary
 37 and proper.

38 (3)(a) To the extent necessary to secure ~~the~~ funds for the
 39 respective accounts paying for ~~the payment of~~ covered claims, to
 40 pay the reasonable costs to administer such accounts ~~the same,~~
 41 and ~~to the extent necessary~~ to secure ~~the~~ funds for the account
 42 specified in s. 631.55(2)(b) or to retire indebtedness,
 43 including, without limitation, the principal, redemption
 44 premium, if any, and interest on, and related costs of issuance
 45 of, bonds issued under s. 631.695 and the funding of any
 46 reserves and other payments required under the bond resolution
 47 or trust indenture pursuant to which such bonds have been
 48 issued, the office, upon certification of the board of
 49 directors, shall levy regular assessments in the proportion that
 50 each insurer's net direct written premiums in this state in the
 51 classes protected by the account bears to the total of the said
 52 net direct written premiums received in this state by all such
 53 insurers for the preceding calendar year for the kinds of
 54 insurance included within such account. Regular assessments
 55 shall be remitted to and administered by the board of directors
 56 in the manner specified by the approved plan. Each insurer so

57 | assessed has ~~shall have~~ at least 30 days' written notice as to
 58 | the date the assessment is due and payable. ~~Every assessment~~
 59 | ~~shall be made as a uniform percentage applicable to the net~~
 60 | ~~direct written premiums of each insurer in the kinds of~~
 61 | ~~insurance included within the account in which the assessment is~~
 62 | ~~made.~~ The regular assessments levied against an any insurer may
 63 | ~~shall not exceed~~ in any one year exceed ~~more than~~ 2 percent of
 64 | that insurer's net direct written premiums in this state for the
 65 | kinds of insurance included within such account during the
 66 | calendar year next preceding the date of such assessments. The
 67 | Legislature finds and declares that regular assessments paid by
 68 | an insurer or insurer group as a result of a levy by the office
 69 | constitute advances of funds from the insurer to the
 70 | association. An insurer may fully recoup regular assessments
 71 | levied against prior year premiums by applying a separate
 72 | recoupment factor to the premium of policies of the same kind or
 73 | line as were considered by the office in determining the
 74 | assessment liability of the insurer or insurer group.

75 | (b) In lieu of collecting the regular assessment under
 76 | paragraph (a) from insurers, the association may collect all or
 77 | part of the assessment directly from policyholders. If the
 78 | association elects to collect the assessment directly from
 79 | policyholders, the office shall issue an order specifying the
 80 | date the board requires the insurers to begin collecting the
 81 | assessment, which must be at least 90 days after the date the
 82 | board certifies the assessment. The order must specify a uniform
 83 | percentage determined by the board, and verified by the office,
 84 | of the direct written premium for all lines of business in the

85 applicable accounts. The assessment certified in any one
 86 calendar year may not exceed 2 percent of the premium. The
 87 insurers shall collect such assessments without being affected
 88 by any credit, limitation, exemption, or deferment. Assessments
 89 collected under this paragraph shall be transferred regularly to
 90 the association as set forth in the order levying the
 91 assessment.

92 (c)(b) If sufficient funds from regular and emergency such
 93 assessments, together with funds previously raised, are not
 94 available in any one year in the respective account to make all
 95 the payments or reimbursements ~~then~~ owing to insurers, insureds,
 96 or claimants, the funds available shall be prorated and the
 97 unpaid portion ~~shall be paid as soon thereafter~~ as funds become
 98 available.

99 ~~(c) The Legislature finds and declares that all~~
 100 ~~assessments paid by an insurer or insurer group as a result of a~~
 101 ~~levy by the office, including assessments levied pursuant to~~
 102 ~~paragraph (a) and emergency assessments, constitute advances of~~
 103 ~~funds from the insurer to the association. An insurer may fully~~
 104 ~~recoup such advances by applying a separate recoupment factor to~~
 105 ~~the premium of policies of the same kind or line as were~~
 106 ~~considered by the office in determining the assessment liability~~
 107 ~~of the insurer or insurer group.~~

108 (d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated
 109 or paid to the ~~said~~ association or any of its accounts.

110 (e)(e)1.a. In addition to regular assessments ~~otherwise~~
 111 authorized under ~~in~~ paragraph (a), and to the extent necessary
 112 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)

113 for the direct payment of covered claims of insurers rendered
 114 insolvent by the effects of a hurricane and to pay the
 115 reasonable costs to administer such claims, or to retire
 116 indebtedness, including, without limitation, the principal,
 117 redemption premium, if any, and interest on, and related costs
 118 of issuance of, bonds issued under s. 631.695 and the funding of
 119 any reserves and other payments required under the bond
 120 resolution or trust indenture pursuant to which such bonds have
 121 been issued, the office, upon certification of the board of
 122 directors, shall levy emergency assessments directly upon
 123 policyholders, which shall be collected by insurers holding a
 124 certificate of authority. Pursuant to such levy, the office
 125 shall issue an order specifying the date the board requires the
 126 insurers to begin collecting the assessment, which must be at
 127 least 90 days after the date the office levies the assessment.
 128 The order must specify a uniform percentage determined by the
 129 board, and verified by the office, of the direct written premium
 130 for all lines of business in the applicable accounts. The
 131 assessment certified in any one calendar year collected may not
 132 exceed 2 percent of the premium. The insurers shall collect such
 133 assessments without being affected by any credit, limitation,
 134 exemption, or deferment. Assessments collected by insurers under
 135 this paragraph shall be transferred regularly to the association
 136 as set forth in the order levying the assessment.

137 1. If, after consultation with its financial advisor, the
 138 board determines that it must immediately begin paying the
 139 covered claims of one or more insolvent insurers and financing
 140 is not reasonably available, it may certify the emergency

141 assessment on insurers in the same manner as set forth in
 142 paragraph (a), except that an emergency assessment may be paid
 143 by the insurer in a single payment or, at the option of the
 144 association, in 12 monthly installments with the first
 145 installment being due and payable at the end of the month after
 146 the emergency assessment is levied and subsequent installments
 147 being due by the end of each succeeding month. ~~The emergency~~
 148 assessments payable under this paragraph by any insurer shall
 149 not exceed in any single year more than 2 percent of that
 150 insurer's direct written premiums, net of refunds, in this state
 151 during the preceding calendar year for the kinds of insurance
 152 within the account specified in s. 631.55(2)(b).

153 2.b. ~~Any Emergency assessments authorized under this~~
 154 ~~paragraph~~ shall be levied by the office only upon insurers
 155 ~~referred to in sub-subparagraph a.,~~ upon certification as to the
 156 need for such assessments by the board of directors. If ~~In the~~
 157 ~~event~~ the board ~~of directors~~ participates in the issuance of
 158 bonds in accordance with s. 631.695, emergency assessments shall
 159 be levied in each year that bonds issued under s. 631.695 and
 160 secured by such emergency assessments are outstanding, ~~in such~~
 161 amounts up to such 2 percent ~~2-percent~~ limit as required in
 162 order to provide for the full and timely payment of the
 163 principal of, redemption premium, if any, and interest on, and
 164 related costs of issuance of, such bonds. The emergency
 165 assessments ~~provided for in this paragraph~~ are assigned and
 166 pledged to the municipality, county, or legal entity issuing
 167 bonds under s. 631.695 for the benefit of the holders of such
 168 bonds, in order to enable such municipality, county, or legal

169 entity to provide for the payment of the principal of,
 170 redemption premium, if any, and interest on such bonds, the cost
 171 of issuance of such bonds, and the funding of any reserves and
 172 other payments required under the bond resolution or trust
 173 indenture pursuant to which such bonds have been issued, without
 174 the necessity for ~~of~~ any further action by the association, the
 175 office, or any other party. If ~~To the extent~~ bonds are issued
 176 under s. 631.695 and the association secures ~~determines to~~
 177 ~~secure~~ such bonds by a pledge of revenues received from the
 178 emergency assessments, such bonds, upon such pledge of revenues,
 179 shall be secured by and payable from the proceeds of such
 180 emergency assessments, and the proceeds of emergency assessments
 181 levied under this paragraph shall be remitted directly to and
 182 administered by the trustee or custodian appointed for the
 183 payment of such bonds.

184 ~~e. Emergency assessments under this paragraph may be~~
 185 ~~payable in a single payment or, at the option of the~~
 186 ~~association, may be payable in 12 monthly installments with the~~
 187 ~~first installment being due and payable at the end of the month~~
 188 ~~after an emergency assessment is levied and subsequent~~
 189 ~~installments being due not later than the end of each succeeding~~
 190 ~~month.~~

191 ~~3.d.~~ If emergency assessments are imposed, the report
 192 required by s. 631.695(7) must ~~shall~~ include an analysis of the
 193 revenues generated from the emergency assessments imposed under
 194 this paragraph.

195 ~~4.e.~~ If emergency assessments are imposed, the references
 196 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to

197 regular assessments levied under paragraph (a) must ~~shall~~
 198 include emergency assessments imposed under this paragraph.

199 ~~5.2.~~ If the board of directors participates in the
 200 issuance of bonds in accordance with s. 631.695, an emergency
 201 ~~annual~~ assessment under this paragraph must ~~shall~~ continue while
 202 the bonds issued with respect to which the assessment was
 203 imposed are outstanding, including any bonds the proceeds of
 204 which were used to refund bonds issued pursuant to s. 631.695,
 205 unless adequate provision has been made for the payment of the
 206 bonds in the documents authorizing the issuance of such bonds.

207 ~~6.3.~~ Emergency assessments under this paragraph are not
 208 premium and are not subject to the premium tax, to any fees, or
 209 to any commissions. An insurer is liable for all emergency
 210 assessments that the insurer collects and shall treat the
 211 failure of an insured to pay an emergency assessment as a
 212 failure to pay the premium. An insurer is not liable for
 213 uncollectible emergency assessments.

214 (f) The recoupment factor applied to policies in
 215 accordance with paragraph (a) or subparagraph (e)1. ~~paragraph~~
 216 ~~(e)~~ shall be selected by the insurer or insurer group ~~so as to~~
 217 provide for the probable recoupment of ~~both assessments levied~~
 218 ~~pursuant to paragraph (a) and emergency~~ assessments over a
 219 period of 12 months, unless the insurer or insurer group, at its
 220 option, elects to recoup the assessment over a longer period.
 221 The recoupment factor applies ~~shall apply~~ to all policies of the
 222 same kind or line as were considered by the office in
 223 determining the assessment liability of the insurer or insurer
 224 group issued or renewed during a 12-month period.

225 1. If the insurer or insurer group does not collect the
 226 full amount of the assessment during one 12-month period, the
 227 insurer or insurer group may apply recalculated recoupment
 228 factors to policies issued or renewed during one or more
 229 succeeding 12-month periods.

230 2. If, at the end of a 12-month period, the insurer or
 231 insurer group has collected from the combined kinds or lines of
 232 policies subject to assessment more than the total amount of the
 233 assessment paid by the insurer or insurer group, the excess
 234 amount shall be disbursed as follows:

235 a.1. If the excess amount does not exceed 15 percent of
 236 the total assessment paid by the insurer or insurer group, the
 237 excess amount shall be remitted to the association within 60
 238 days after the end of the 12-month period in which the excess
 239 recoupment charges were collected.

240 b.2. If the excess amount exceeds 15 percent of the total
 241 assessment paid by the insurer or insurer group, the excess
 242 amount shall be returned to the insurer's or insurer group's
 243 current policyholders by refunds or premium credits. The
 244 association shall use any remitted excess recoupment amounts to
 245 reduce future assessments.

246 3.(g) Amounts recouped pursuant to this paragraph
 247 ~~subsection~~ for assessments levied under paragraph (a) due to
 248 insolvencies on or after July 1, 2010, are considered premium
 249 solely for premium tax purposes and are not subject to fees or
 250 commissions. However, insurers shall treat the failure of an
 251 insured to pay a recoupment charge as a failure to pay the
 252 premium.

253 ~~4.(h)~~ At least 15 days before applying the recoupment
 254 factor to any policies, the insurer or insurer group shall file
 255 with the office a statement for informational purposes only
 256 setting forth the amount of the recoupment factor and an
 257 explanation of how the recoupment factor will be applied. Such
 258 statement must ~~shall~~ include documentation of the assessment
 259 paid by the insurer or insurer group and the arithmetic
 260 calculations supporting the recoupment factor. The insurer or
 261 insurer group may use the recoupment factor at any time after
 262 the expiration of the 15-day period. The insurer or insurer
 263 group need submit only one informational statement for all lines
 264 of business using the same recoupment factor.

265 5.(i) Within ~~No later than~~ 90 days after the insurer or
 266 insurer group has completed the recoupment process, the insurer
 267 or insurer group shall file with the office, for information
 268 purposes only, a final accounting report documenting the
 269 recoupment. The report must ~~shall~~ provide the amounts of
 270 assessments paid by the insurer or insurer group, the amounts
 271 and percentages recouped by year from each affected line of
 272 business, and the direct written premium subject to recoupment
 273 by year. The insurer or insurer group need submit only one
 274 report for all lines of business using the same recoupment
 275 factor.

276 Section 2. This act shall take effect July 1, 2013, and
 277 shall apply to any assessment certified and levied after that
 278 date regardless of when the insolvency or insolvencies occurred.